



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 10, 1993

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR93-208

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18632.

The Texas Department of Criminal Justice -- Institutional Division (the "department") received an open records request for certain documents pertaining to the construction of the M.W. Stiles Prison Unit currently under construction near Beaumont, Texas. You state that the department has granted access to approximately 10,000 pages of documents coming within the ambit of the request. You seek to withhold, however, certain documents pursuant to sections 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act.

You state that the information at issue

was generated by [one of the department's staff attorneys] during settlement negotiations with a general contractor [for the construction project] for payments requested in addition to the original negotiated price. During the process of preparing for negotiation relating to those claims, [the attorney] reviewed at least some of the documents which reported the progress of the construction of the particular prison and identified some which he thought were of particular interest and utility to the negotiating team. He provided short analysis and then attached copies of salient extracts from the larger set of documents relating to the claim.

The originals of the documents [compiled by the attorney] are part of the materials *which have been made available to [the] requestor . . .* in their original filing location.

We believe that all this material is covered by attorney work product doctrine, whether described as documents relating to the settlement of a claim, as attorney client or attorney work product information, or as intra-departmental memoranda in that this is [the attorney's] advice as to which documents might be of particular utility to the negotiating team in settling the dispute with the general contractor. [Emphasis added].

The records you submitted to this office for review can be grouped into two general categories: original records pertaining to the construction of the prison unit that were compiled by the attorney and the analyses of those original records. In this instance, this office need not reach the issue of whether the compilation of records as such comes under the protection of the exceptions you raise because, by your own admission, the department has previously released these same records to the requestor. The department has therefore fulfilled its obligation under the Open Records Act with regard to these records; the department need not release them a second time in response to the pending open records request.

You contend that the analyses prepared by the staff attorney come under the protection of section 3(a)(3) because these records were prepared specifically for members of the department's negotiating team for their internal use during the negotiation process. Section 3(a)(3) of the Open Records Act protects, *inter alia*, "information pertaining to . . . settlement negotiations." *See* Open Records Decision No. 114 (1975). We note, however, that the negotiations between the department and the general contractor constructing the prison unit have concluded. Consequently section 3(a)(3) is no longer applicable.

You also contend that the analyses come under the protection of the attorney-client privilege. *See* V.T.C.S. art. 6252-17a, § 3(a)(7). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. Open Records Decision No. 574 (1990). After reviewing the analyses, this office concludes that only portions of these documents consisting of the attorney's legal advice and opinion come under the protection of section 3(a)(7). We have marked the portions of the analyses that you may withhold under section 3(a)(7)¹; the department must release the remaining portions of these documents.

¹We note that although you have also raised section 3(a)(11) with regard to these records, in this instance your contentions regarding section 3(a)(11) are coextensive with those of section 3(a)(7). We therefore need not further discuss your section 3(a)(11) claims.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-208.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/RWP/le

Enclosures: submitted documents

Ref.: ID# 18632
ID# 19270

cc: Mr. Jon Wickwire, Esq.
Wickwire, Gavin, P.C.
International Gateway, Suite 700
8100 Boone Boulevard
Vienna, Virginia 22182-2642
(w/o enclosures)